

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p>Scott Kosner, SBN 172379 Tyson M. Takeuchi, SBN 177419 LAW OFFICES OF TYSON TAKEUCHI 1055 Wilshire Blvd., Suite 850 Los Angeles, CA 90017 Tel 213.637.1566 Fax 888.977.6310 tyson@tysonfirm.com scottk@tysonfirm.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Joyce Miller</p>		<p>FOR COURT USE ONLY</p>	
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</b></p>			
<p>In re:  Joyce Miller,</p> <p>Debtor(s).</p>		<p>CASE NO.: 2:17-bk-20136-NB CHAPTER: 13</p>	
		<p><b>RESPONSE TO MOTION FOR ORDER TO TERMINATE, ANNUL, MODIFY, OR CONDITION THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 AND DECLARATION(S) IN SUPPORT</b></p>	
		<p>DATE: 3/26/2019 TIME: 10:00 am COURTROOM: 1545 PLACE: United States Bankruptcy Court 255 E. Temple Street Los Angeles, California 90012</p>	

**Movant:** US Bank Trust National Association

**Respondent:** ☒ Debtor ☐ Trustee ☐ Other:

**GENERAL NOTE:** A request for additional time is **not** usually an adequate response in opposition to the Motion. This Response, supporting declaration(s) and other admissible evidence must be filed with the court and served pursuant to the LBRs.

1. ☐ **NON-OPPOSITION:** Notice is hereby given that the Respondent does not oppose the granting of the Motion.

**NOTE:** If you do not oppose the Motion, there is no need to appear at the hearing scheduled in the Motion.

2. ☐ **LIMITED OPPOSITION -- APPEARANCE REQUIRED:** Respondent opposes the Motion only to the extent that it seeks immediate relief from stay. Respondent requests that no lock out, foreclosure, or repossession shall take place before (*specify date*):

The reason for this request is (*specify*):

3. ☒ **OPPOSITION -- APPEARANCE REQUIRED:** Notice is hereby given that the Respondent opposes the granting of the Motion for the reasons set forth below.

- a. Respondent disputes the allegations/evidence contained in the Motion. As shown in the Declaration(s) filed with this Response:

☒ The value of the Property is \$ 1,043,471.00, based upon (*specify*):  
Internet comparable Sales data (Zillow.com).

☒ Total amount of debt (loans) on the Property is \$ 133,600.00.

☐ More payments have been made to Movant than the Motion has accounted for. True and correct copies of canceled checks proving the payments that have been made are attached as Exhibit \_\_\_\_\_.

☒ The Property is necessary for an effective reorganization. Respondent has filed or intends to file a plan requiring the Property. A true and correct copy of the Plan is attached as Exhibit \_\_\_\_\_.

☐ The Property is insured. A true and correct copy of the policy currently in effect is attached as Exhibit \_\_\_\_\_.

☐ The Movant's description of the status of the unlawful detainer proceeding is not accurate. See attached Declaration for Respondent's evidence.

☐ Respondent denies that this bankruptcy was filed in bad faith or improperly. See attached Declaration containing Respondent's evidence.

☐ Debtor would be prejudiced if the lawsuit or administrative proceeding is allowed to continue outside the bankruptcy court. See attached Declaration regarding Respondent's contentions.

☐ Service of the Motion: ☐ Not all parties were served ☐ Insufficient notice of the hearing

☐ Incorrect address used for (*specify*): \_\_\_\_\_

☒ Other (*specify*): Debtor request an Adequate Protection Order to catch up on all post petition mortgage arrears. Debtor has sufficient equity in the property to protect Movant's interest.

b. Respondent asserts:

- ☐ Case has been converted from chapter \_\_\_\_\_ to chapter \_\_\_\_\_.
- ☐ All postpetition arrears will be cured by the hearing date.
- ☒ The Debtor has equity in the Property in the amount of \$ 909,871.00.
- ☒ Movant has an equity cushion of \$ 809,871.00 which is sufficient to provide adequate protection.
- ☒ The Property is necessary for an effective reorganization because (*specify reasons why*):  
Debtor lives in the property with her family. Debtor has sufficient funds available through her savings and expected income tax refunds to quickly cure the postpetition mortgage arrearage.

- ☒ The Motion should be denied because (*specify*):

Debtor has a sufficient equity cushion to protect Movant's interest. The fair market value of Debtor's home is \$1,043,471 per internet comparable sales data (Zillow.com). The total consensual liens against her property total \$133,600 per Movant's Motion. Debtor request an APO in order to cure the post petition arrears.

Due to the enormous equity cushion in the Debtor's home, Debtor request that the Court order that no foreclosure sale may take place for at least a 90-day period if the Court grants Movant's motion for relief from the automatic stay.

4. EVIDENCE IN SUPPORT OF RESPONSE AND SUPPORTING PAPERS:

**NOTE REGARDING SUPPORTING PAPERS:** *Declarations in opposition to the Motion **MUST** be attached hereto. Any individual signing a declaration must have personal knowledge of the facts stated in it and should attach any supporting documents, if possible. You may attach a Memorandum of Points and Authorities if you desire, but it is not required.*

**NOTE REGARDING SERVICE OF RESPONSE AND SUPPORTING PAPERS:** *Pursuant to the LBRs, you must file with the clerk this completed Response along with supporting declaration(s) signed under penalty of perjury, AND also serve a copy of the Response and declaration(s) on the Movant's attorney (or Movant, if no attorney), the trustee, the United States trustee, and all other parties to the Motion.*

Pursuant to the LBRs, attached hereto are the following papers in support of this Response:

- |   |  |
|---|--|
| <input type="checkbox"/> Declaration by Debtor  | <input checked="" type="checkbox"/> Declaration by Debtor's attorney     |
| <input type="checkbox"/> Declaration by trustee   | <input type="checkbox"/> Declaration by trustee's attorney               |
| <input type="checkbox"/> Declaration by appraiser   | <input type="checkbox"/> Memorandum of Points and Authorities (optional) |
| <input checked="" type="checkbox"/> Other (specify): True and correct copy of comparable sales data for Debtor's home dated 3/22/2019. Exhibit A. |  |

Date: 3/22/2019

Respectfully submitted,

Joyce Miller

Printed name of Respondent

The Law Office of Tyson Takeuchi

Printed name of law firm (if applicable)



Signature

Scott Kosner, SBN 172379

Printed name of Respondent or attorney for Respondent

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1055 Wilshire Boulevard, Suite 850, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled: **RESPONSE TO MOTION FOR ORDER TO TERMINATE, ANNUL, MODIFY, OR CONDITION THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 AND DECLARATION(S) IN SUPPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 3/22/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

below:

Jenelle C Arnold [ecfcacb@aldridgepite.com](mailto:ecfcacb@aldridgepite.com), [jarnold@ecf.courtdrive.com](mailto:jarnold@ecf.courtdrive.com)  
Kathy A Dockery (TR) [EFiling@LATrustee.com](mailto:EFiling@LATrustee.com)  
Michelle R Ghidotti [ECFNotifications@ghidottitlaw.com](mailto:ECFNotifications@ghidottitlaw.com)  
Scott Kosner [tyson@tysonfirm.com](mailto:tyson@tysonfirm.com)  
Avi Schild [bk@atlasacq.com](mailto:bk@atlasacq.com)  
United States Trustee (LA) [ustpregion16.la.ecf@usdoj.gov](mailto:ustpregion16.la.ecf@usdoj.gov)

Kristin A Zilberstein [bknotifications@ghidottiberger.com](mailto:bknotifications@ghidottiberger.com);  
[gbadmin@ecf.courtdrive.com](mailto:gbadmin@ecf.courtdrive.com)

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 3/20/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

03/22/2019  
Date

Armen Galstian  
Printed Name

  
Signature

# DECLARATION

1                                    DECLARATION OF SCOTT KOSNER, ESQ.

2        I, Scott Kosner, declare and state as follows:

3            1.        I am an attorney at law, licensed to practice before all  
4        courts in the State of California and the Central District of  
5        California Federal Courts. I am over the age of eighteen years, and if  
6        called upon to testify, I could and would do so competently. I have  
7        personal knowledge of the facts set forth herein, and based on that  
8        personal knowledge I assert that all such facts are true and correct  
9        to the best of my knowledge. To the extent I base my testimony upon  
10       information and belief or upon admissible evidence other than my  
11       personal knowledge, I will specifically state.

12           2.        On January 17, 2015 I emailed the attorney for US Bank to  
13        advise them that my client would have the entire amount need to cure  
14        the default that caused the filing of the motion for relief from stay.

15           3.        The attorney for the creditor advised me that they would  
16        get the hearing continued until they were able to talk to US Bank and  
17        get an apo agreement.

18           4.        I did not hear back from the creditor's attorney until  
19        today and I finally got a hold of Jennifer Bergh who is in charge of  
20        this file. She advised me that US Bank had denied the request for an  
21        apo agreement.

22           5.        I asked her please contact them and let them know that my  
23        client has \$10,000 right now to tender and the remainder of the  
24        arrears would be cured by no later than the end of April. Jennifer  
25        Bergh advised me that she would reach out again and try to get an apo  
26        agreement.

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1           6. I have dealt with hundreds of relief of stay motions in the  
2 past and I have always gotten an apo agreement and given an  
3 opportunity for my client to pay the creditor.

4           7. My client has over 900,000 in equity in this property and  
5 desperately needs the protection of the automatic stay. She will cure  
6 the entire due amount by Mid to end of April.

7           8. I did not file an answer to the motion for relief because I  
8 did not foresee any problem in getting an apo agreement.

9           I declare under penalty of perjury under the laws of the State of  
10 California and the United States of America that the foregoing is true  
11 and correct to the best of my knowledge and belief.

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15           Executed this 22<sup>nd</sup> day of March 2019, at Los Angeles, California.

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20           Scott Kosner, Declarant  
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# EXHIBIT A

CORRECT HOME FACTS

SAVE

SHARE

MORE ▾

EXPAND

CLOSE

 Street View

# 1659 253rd St Harbor City, CA 90710

8 beds · 5 baths ·  
3,994 sqft

OFF  
MARKET  
Zestimate®:  
\$1,043,471

Rent  
Zestimate®:  
\$2,618 /mo

EST. REFI  
PAYMENT

Est. Refi  
Payment:  
\$3,931/mo



 See current rate

 See current rate

1659 253rd St, Harbor City, CA is a multiple occupancy home that contains 3,994 sq ft and was built in 1949. It contains 8 bedrooms and 5 bathrooms.

The Zestimate for this house is \$1,043,471, which has increased by \$21,985 in the last 30 days. The Rent Zestimate for this home is \$2,618/mo, which has increased by \$121/mo in

## Home Shoppers are Waiting



Ask an agent about market conditions in your neighborhood.



I own this home and would like to ask an agent about selling 1659 253rd St, Harbor City, CA 90710.

Contact Agent

Or call 562-386-0917 for more info